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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

- (A) Council finds that this ordinance is needed to clarify and further define the prohibitions on camping, obstruction, and sitting and lying in public and other specified areas.
- (B) Council finds that the prohibitions and law enforcement procedures enacted by this ordinance do not make it a crime to be a person experiencing homelessness in the City, but prohibit specific risky and potentially injurious behaviors in specific areas.
- (C) Council finds that the City Manager's August 30, 2019 memorandum challenges the Council to provide additional clarity with regards to the June 20, 2019 changes Council made to City Code Sections 9-4-11 (*Camping in Public Area Prohibited*) and 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*).

### 9-4-11(1) DEFINITIONS:

- Page 1 of 13

(c) using a tent or shelter or other structure for a living accommodation;

(d) carrying on cooking activities; or

(e) digging or earth breaking activities.

(2) HOMELESS SHELTER means a supervised publicly or privately operated facility that is designed to provide temporary living accommodations for individuals who lack a fixed, regular, and adequate residence while providing them with social service and other assistance to find a home and that is designated by the city as a shelter.

(3) PARK means a parcel of land dedicated and used as parkland, or city-owned land used for a park or recreational purpose that is under the administrative control of the Parks and Recreation Department.

(4) PUBLIC AREA means an outdoor area accessible to the public including a street, highway, park, parking lot, alleyway, pedestrian way, and the common areas of a school, hospital, apartment building, office building, transport facility, or business.

#### **9-4-11(2) FINDINGS:**

(A) Council finds that the city has a compelling interest in:

(1) Protecting the health and safety of all residents and visitors, including people who are experiencing homelessness;

(2) Ensuring the free movement of pedestrians and vehicles without undue obstruction or delay, or exposure to dangerous vehicular traffic, that may be caused by people camping in areas where there is high pedestrian or vehicular traffic;

(3) Protecting the environment, water quality and public health, and mitigating fire risk in sensitive, flood-prone, or high fire risk areas that may be negatively affected by people camping; and

(4) Ensuring that parks and other public spaces are, to the greatest extent possible, protected and available for equal access and use by all.

(B) Council finds that camping in public areas can, in the areas and circumstances identified in this section:

(1) threaten public health and safety, including the health and safety of those camping;

(2) create substantial risks to the environment; and

(3) block or obstruct the safe access of pedestrians and vehicles to buildings and public infrastructure.

(C) Council finds that unwanted camping in the areas identified in this Subsection (C) may be prohibited by other applicable law or by other applicable property or building use rules. Council finds that the risks posed by unwanted camping are great enough to ensure that camping is prohibited in those areas, including: ***Mayor Adler proposed moving list of existing prohibitions to finding***

(1) in a park;

(2) on land designated by the city for conservation, preservation, or water protection including nature preserves, the Balcones Canyonland Preserves, and Austin Water Wildlands;

(3) on flood buy-out lands that the city has acquired as high flood risk areas;

(4) in the right-of-way of a railroad or light rail track or crossing;

(5) in a city library or on the grounds of a city library;

(6) on private property without the permission of the owner or a person with apparent authority to act for the owner;

(7) in or on transit stops, shelters, platforms, or stations; or

- 103 (8) in a designated and marked special use zone, including  
104 construction zones, commercial service zones, passenger  
105 loading zones, customer service zones, and valet zones.  
106

107 **9-4-11(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:**

- 108  
109 (A) Except as provided in Subsection (E), a person commits an offense  
110 if the person camps in a public area that is not designated as a  
111 camping area by the city and the person is:

- 112  
113 (1) materially endangering the health or safety of another person or  
114 of themselves; or  
115  
116 (2) intentionally, knowingly, or recklessly rendering impassable, or  
117 impeding, the reasonable use of a public area making usage of  
118 such area unreasonably inconvenient or hazardous.  
119

- 120 (B) **[Mayor Adler proposed amendment]** A person is materially  
121 endangering the health or safety of another person or of themselves  
122 or is rendering impassable or impeding the reasonable use of a  
123 public area making usage of such area unreasonably inconvenient or  
124 hazardous if the person camps in dangerous or high-traffic public  
125 areas including:

- 126  
127 (1) on or inside a culvert or storm drain;  
128  
129 (2) in the bed or on the bank of a creek or river and within 5 feet of  
130 the top of the bank of a creek or river;  
131  
132 (3) on any part of an accessibility ramp for persons with  
133 disabilities;  
134  
135 (4) on land that the city has designated as having a high fire risk;  
136  
137 (5) on a sidewalk;  
138  
139 (6) within 15 feet of the door jamb of an entrance or exit to a  
140 business or a residence **[Mayor Adler proposed amendment]**  
141 ~~on the following high pedestrian and vehicular traffic~~

roadways, including any sidewalks as referenced in (5) above  
or right-of-way:

~~Guadalupe Street between Martin Luther King Jr. Blvd. and 26<sup>th</sup>  
Street;  
24<sup>th</sup> Street between N Lamar Blvd and Guadalupe Street  
Congress Avenue between Oltorf Street and 11<sup>th</sup> Street;  
2nd Street between Trinity Street and West Avenue;  
5th Street between IH 35 and Lamar Blvd;  
6th Street between IH 35 and Lamar Blvd;~~

(7) In areas established around homeless shelters as follows:

- a. Within the area of the Austin Resource Center for Homeless (ARCH) bordered by East 4<sup>th</sup> Street (South), Brushy Street (East), East 11<sup>th</sup> Street (North), and Brazos Street (West), excluding any area under IH-35;
- b. At the time that the South Austin Housing Center homeless shelter becomes operational, within the area bordered by the western boundary of Manchaca Road, the eastern boundary of South 1<sup>st</sup> Street, the northern boundary of Lightsey Road, and the southern boundaries of Redd Street and West St. Elmo;

(8) on a traffic island, median strip, median island, intersection island or other similar area under a highway overpass that separates opposing traffic flows with either a painted area or a raised curb where one of the traffic flows is a u-turn lane; ***[Responding to Mayor Adler concerns that this area may be too broad by narrowing description]*** or

(9) on the sloped area under a highway and at the top of a retaining wall or alongside a highway overpass;

**(C)** ~~A person is materially endangering the health or safety of another person or of themselves or rendering impassable or impeding the reasonable use of a public area making usage of such area unreasonably inconvenient or hazardous if -the person camps in a manner that includes:~~ ***[Mayor Adler proposed amendment]***

- 182  
183 (1) damaginges, alterings, or modifyings public infrastructure,  
184 including benches, retaining walls, or planters; or  
185 ~~(2) obstructs access to or egress from the entrance or exit of any~~  
186 ~~building by camping within six feet of the entrance or exit, as~~  
187 ~~measured from the door jamb; or~~  
188 (2) obstructings normal use of and access to public infrastructure,  
189 including benches or parking pay stations.  
190

191 (D) A person is camping if the person engages in any of the activities  
192 listed in Subsection (A)(1) of City Code Section 9-4-11(1)  
193 (*Camping in Public Area Prohibited*) if it reasonably appears, based  
194 on the totality of the circumstances, that the person conducting the  
195 activity is using a public area for living accommodation purposes,  
196 regardless of the person's intent or engagement in other activities.  
197

198 (E) This section does not apply to camping or cooking in a park that  
199 complies with park regulations.  
200

201 (F) It is an affirmative defense to prosecution that a person owns the  
202 property or has secured the permission of the property owner to  
203 camp in a public area.  
204

#### 205 **9-4-11(4) ENFORCEMENT AND ENGAGEMENT PROCESS:**

206

207 Unless a law enforcement officer determines that there is an imminent  
208 health or safety threat, a law enforcement officer may issue a citation for a  
209 violation of this section only if, prior to issuing the citation, the law  
210 enforcement officer:  
211

- 212 (A) notified the person that the conduct violates this section;  
213  
214 (B) provides the person with a reasonable opportunity to comply with  
215 the prohibition, but the person does not comply; and  
216  
217 (C) contacts, whenever reasonable, a member of a Homeless Outreach  
218 Street Team (HOST), case worker, community health paramedic, or  
219 other city designee who shall have the opportunity to offer to  
220 transport a person who continues to camp in violation of City Code  
221 Section 9-4-11(*Camping in Public Area Prohibited*) to a location at

which camping, is not prohibited and, as reasonably possible, at which case management and housing services can be received; or

- (D) determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.

**PART 3.** The caption and City Code Section 9-4-14 (*Obstruction in the Downtown Austin Community Court Area Prohibited*) are repealed and replaced to read as follows:

**§ 9-4-14 OBSTRUCTION IN THE DOWNTOWN AUSTIN COMMUNITY COURT AREA AND SITTING OR LYING IN OTHER SPECIFIED AREAS PROHIBITED**

**9-4-14(1) DEFINITIONS:**

In this section:

- (A) **DISABILITY** means having a physical or mental impairment which substantially limits one or more major life activities.

(1) **PHYSICAL OR MENTAL IMPAIRMENT** means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) **MAJOR LIFE ACTIVITIES** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, learning, breathing, and working.

- (B) **HOMELESS SHELTER** means a supervised publicly or privately operated facility that is designed to provide temporary living accommodations for individuals who lack a fixed, regular, and

adequate residence while providing them with social service and other assistance to find a home and that is designated by the city as a shelter.

#### **9-4-14(2) FINDINGS:**

- (A) The council finds that the city has a compelling interest in:
- (1) encouraging and preserving a vital, pedestrian-friendly urban core;
  - (2) promoting tourism and business in the central business district;
  - (3) preserving the quality of urban life; and
  - (4) encouraging businesses and neighborhoods in the central city where walking is a realistic alternative to vehicles that use fossil fuels.
- (B) The council finds that in areas with high pedestrian traffic and a high incidence of petty crime related to public disorder, individuals obstructing, sitting, or lying in the pedestrian right-of-way:
- (1) are disruptive to residents, businesses, and customers;
  - (2) discourage, block, or inhibit the free passage of pedestrians; and
  - (3) contribute to the loss of access to and enjoyment of public places.

#### **9-4-14(3) OFFENSES; EXCEPTIONS; AND AFFIRMATIVE DEFENSE:**

- (A) A person commits an offense if the person is:
- (1) obstructing the right-of-way between the roadway and the abutting property line or structure, or on an object placed in that area, and the person is:



- 302
- 303 (i) materially endangering the health or safety of another
- 304 person or of themselves; or
- 305
- 306 (ii) intentionally, knowingly, or recklessly rendering
- 307 impassable or impeding the reasonable use of a public area
- 308 making usage of such area unreasonably inconvenient or
- 309 hazardous;
- 310
- 311 (2) obstructing a sidewalk, trail, or shared-use path; and
- 312
- 313 (3) the person is located in the following area, including the streets
- 314 and pedestrian rights-of-way that bound the area, but not
- 315 including the campus of the University of Texas:
- 316
- 317 (i) beginning at the intersection of 29th Street (West) and
- 318 Lamar Boulevard (North);
- 319 (ii) south on Lamar Boulevard (North) to the north shore of
- 320 Lady Bird Lake;
- 321 (iii) east along the north shore of Lady Bird Lake to the point
- 322 directly south of the curve at the intersection of Jesse E.
- 323 Segovia Street and Robert Martinez, Jr. Street;
- 324 (iv) north to the curve at the intersection of Jesse E. Segovia
- 325 Street and Robert Martinez, Jr. Street;
- 326 (v) west along Jesse E. Segovia Street to the intersection of
- 327 Chicon Street;
- 328 (vi) north on Chicon Street to the intersection of Seventh
- 329 Street (East);
- 330 (vii) west on Seventh Street (East) to the IH-35 East Frontage
- 331 Road;
- 332 (viii) north on the IH-35 East Frontage Road to the
- 333 intersection of Martin Luther King, Jr. Boulevard;
- 334 (ix) west on Martin Luther King, Jr. Boulevard to the
- 335 intersection of Guadalupe Street;
- 336 (x) north on Guadalupe Street to the intersection of 29th
- 337 Street (West); and
- 338 (xi) northwest on 29th Street (West) to the intersection of
- 339 Lamar Boulevard (North), the place of beginning.
- 340

341 (B) A person commits an offense if the person sits or lies down in the  
342 following areas:

- 343
- 344 (1) in the right-of-way of a railroad or light rail track or crossing;
- 345 (2) in a designated and marked special use zone, including,
- 346 construction zones, commercial service zones, passenger
- 347 loading zones, customer service zones, and valet zones;
- 348 (3) on any part of an accessibility ramp, located in a public place,
- 349 for persons with disabilities,
- 350 (4) within 15 feet of the door jamb of an entrance or exit to a
- 351 business or a residence [Mayor Adler proposed amendment]
- 352

353 (C) A person commits an offense if the person sits or lies down in the  
354 following areas:

- 355
- 356 (1) Within the area of the Austin Resource Center for Homeless
- 357 (ARCH) bordered by East 4<sup>th</sup> Street (South), Brushy Street
- 358 (East), East 11<sup>th</sup> Street (North), and Brazos Street (West),
- 359 excluding any area under IH-35; or
- 360 (2) At the time that the South Austin Housing Center homeless
- 361 shelter becomes operational, within the area bordered by the
- 362 western boundary of Manchaca Road, the eastern boundary of
- 363 South 1<sup>st</sup> Street, the northern boundary of Lightsey Road, and
- 364 the southern boundaries of Redd Street and West St. Elmo.
- 365

366 (D) This section does not apply to a person who:

367

- 368 (1) is obstructing the right-of-way, or sitting or lying, because of
- 369 a medical emergency;
- 370 (2) operates or patronizes a commercial establishment that
- 371 conducts business on the sidewalk under Title 14 (*Streets and*
- 372 *Use of Public Property*) of the Code;
- 373 (3) participates in or views a parade, festival, performance, rally,
- 374 demonstration, or similar event;
- 375 (4) sits on a chair or bench that is supplied by a public agency or
- 376 by the abutting private property owner;
- 377 (5) sits within a bus stop zone while waiting for public or private
- 378 transportation; or

(6) is waiting in a line for goods, services, or a public event.

- (E) It is an affirmative defense to prosecution if a person is obstructing the right-of-way, or sitting or lying, as the result of a physical manifestation of a disability, even if the manifestation of the disability is not visually observable.

#### **9-4-14(4) ENFORCEMENT AND ENGAGEMENT PROCESS:**

Unless a law enforcement officer determines that there is an imminent health or safety threat, a law enforcement officer may only issue a citation for a violation of this section if, prior to issuing the citation, the law enforcement officer:

- (A) notifies the person that the conduct violates this section;
- (B) provides the person with a reasonable opportunity to comply with the prohibition, but the person does not comply; and
- (C) contacts, whenever reasonable, a member of a Homeless Outreach Street Team (HOST), case worker, community health paramedic, or other city designee who shall have the opportunity to offer to transport a person who continues to obstruct, sit, or lie in violation of City Code Section 9-4-14 (*Obstruction in the Downtown Austin Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*) to a location at which such obstructing, sitting, or lying is not prohibited and, as reasonably possible, at which case management and housing services can be received; or
- (D) determines that the person has previously been notified by a law enforcement officer that the person's conduct at that same address or area violates this section, and the law enforcement officer determines that contact as set forth in Subsection (C) above is not reasonable.

#### **PART 4. Instruction to City Manager.**

- (A) The City Manager shall provide to Council a quarterly report for the first year after passage of this ordinance detailing how often an accused offender under City Code Section 9-4-11

(*Camping in Public Area Prohibited*) and City Code Section 9-4-14 (*Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*) is and is not diverted from criminal sanction through the Enforcement and Engagement process created in City Code Sections 9-4-11 (*Camping in Public Area Prohibited*) and 9-4-14 (*Obstruction in the Downtown Community Court Area and Sitting or Lying in Other Specified Areas Prohibited*).

(B) At such time that the City designates additional homeless shelters, the City Manager shall propose amendments to City Code establishing boundaries to prohibit camping, sitting or lying within approximately one-quarter mile to one-half mile of the shelter as the City Manager determines is necessary to protect public health and safety.

(C) At such time that the Austin Transportation Department identifies additional high pedestrian and vehicular traffic roadways where camping creates a public safety risk, the City Manager shall propose amendments to City Code to add these roadways.

(D) At such time that the City Manager identifies camping practices, structures, possessions, or items that present the greatest public safety risks and potential public health hazards for people camping, sitting, lying, area residents or others, the City Manager shall propose amendments to City Code to add prohibitions for these practices, structures, possession, or items. [Resolution #32, Adler, Garza, Harper-Madison, Renteria, Casar]

**PART 5. This ordinance takes effect 15 days after passage of the ordinance.**

**PASSED AND APPROVED**

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\_\_\_\_\_, 2019

\_\_\_\_\_  
Steve Adler  
Mayor

459 **APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
460 Anne L. Morgan Jannette S. Goodall  
461 City Attorney City Clerk

Draft